

# UNITED STATES DISTRICT COURT

District of Nevada

UNITED STATES OF AMERICA

v.

PHILLIP SMITH

Date of Original Judgment: 12/12/2016  
(Or Date of Last Amended Judgment)

## Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))  
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))  
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))  
☒ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

## AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 2:11-CR-00058-JAD-CWH

USM Number: 45803-048

Richard E. Tanasi, CJA

Defendant's Attorney

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))  
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))  
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))  
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)  
☐ Modification of Restitution Order (18 U.S.C. § 3664)

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1, 3, 5, 9, 11, 15, 17, and 23 of the Superseding Indictment #53

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC §§ 1951	Conspiracy to Interfere with Commerce by Armed Robbery	5/1/2010	1
18 USC §§ 1951 and 2	Interference with Commerce by Robbery	1/18/2010	3
18 USC §§ 1951 and 2	Interference with Commerce by Robbery	1/19/2010	5

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) all remaining counts ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

1/10/2017

Date of Imposition of Judgment

Signature of Judge

JENNIFER A. DORSEY, U.S. DISTRICT JUDGE

Name and Title of Judge

1/10/2017

Date

CASE NUMBER: 2:11-CR-00058-JAD-CWH

[illegible]

DEFENDANT: PHILLIP SMITH  
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## IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :

221 MONTHS PER COUNT, CONCURRENT AS TO ALL COUNTS. ALL COUNTS CONCURRENT WITH STATE COURT CASE #C265381.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant serve his sentence at the designated state facility. If any federal sentence remains after the state sentence has been served, the Court recommends the defendant be designated to FCI Terminal Island.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_ .  
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on \_\_\_\_\_ .  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: PHILLIP SMITH

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**SUPERVISED RELEASE**

Upon release from imprisonment, you will be on supervised release for a term of:

**3 YEARS PER COUNT, CONCURRENT**

and must comply with the following standard conditions, mandatory conditions, and special conditions:

**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

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**MANDATORY CONDITIONS OF SUPERVISION**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.  
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must cooperate in the collection of DNA as directed by the probation officer.

**U.S. Probation Office Use Only**

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: [www.uscourts.gov](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

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### SPECIAL CONDITIONS OF SUPERVISION

**1. Victim-Witness Prohibition** - You shall not have contact, directly or indirectly, with any victim or witness in this instant offense, unless under the supervision of the probation officer.

**2. No Contact with Specific Person(s)**- The defendant shall have no contact, directly or indirectly, associate with, or knowingly be within 500 feet of Develle Merritte, his/her residence, business, or place of employment. Furthermore, if confronted by Develle Merritte in a public place, the defendant shall immediately remove himself/herself from the area.

**3. Debt Obligations** - You shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.

**4. Access to Financial Information** - You shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which you have a control or interest.

**5. Mental Health Treatment** - You shall participate in and successfully complete a mental health treatment program, which may include testing, evaluation, and/or outpatient counseling, as approved and directed by the probation office. You shall refrain from the use and possession of beer, wine, liquor, and other forms of intoxicants while participating in mental health treatment. Further, you shall be required to contribute to the costs of services for such treatment, as approved and directed by the probation office based upon your ability to pay.

**6. Warrantless Search** - You shall submit your person, property, residence, place of business and vehicle under your control to a search, conducted by the United States probation officer or any authorized person under the immediate and personal supervision of the probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision; failure to submit to a search may be grounds for revocation; the defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

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### CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 800.00	\$	\$	\$ 48,108.12

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
See attached restitution list.			

**TOTALS**                      \$ \_\_\_\_\_ 0.00                      **\$48,818.12**

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for    ☐ fine    ☐ restitution.

☒ the interest requirement for the    ☐ fine    ☒ restitution is modified as follows:

will accrue after release from custody.

\* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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## SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 48,818.12 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- Payments shall start immediately after release from imprisonment, interest will accrue once the defendant is released and the defendant be obligated to pay restitution at a rate of 10% of his gross monthly income.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Co-Defendant - Develle Rural Merritte, 2:11-cr-00058-JAD-CWH-2, \$48,018.12 joint and several.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.



**U.S. v. Phillip Smith Develle Merritte**  
**2:11-CR-00058-GMN-CWH**  
**Restitution List**

<b>Victim Name</b>	<b>Date of Robbery</b>	<b>Restitution</b>
Game Stop	1/18/2010	\$1,832.75
Thai Taste	1/19/2010	\$1,500.00
Phvnphen Jaitiang	1/19/2010	\$6,618.77
Sithipong Chanstapornkul	1/19/2010	\$7,050.00
Pepe's Tacos	1/20/2010	\$464.00
Sandra Hernandez	1/20/2010	\$120.00
Subway	1/20/2010	\$1,000.00
Jacqueline Valenzuela	1/20/2010	\$30.00
Patricia Arriaga	1/20/2010	\$100.00
Karla Alvidvez	1/20/2010	\$30.00
Golden Flower Chinese Restaurant	1/21/2010	\$1,000.00
Subway	1/27/2010	\$961.80
William Famini	1/27/2010	\$45.00
Dairy Queen	1/30/2010	\$450.00
Ryan Graybeal	1/30/2010	\$200.00
Kendal Martin	1/30/2010	\$200.00
Roberto's Tacos	1/30/2010	\$300.00
Joe Forte	1/30/2010	\$1,000.00
Subway	1/31/2010	\$800.00
Roberto's Tacos	2/1/2010	\$1,400.00
Michael Cooney	2/1/2010	\$30.00
Subway	2/13/2010	\$1,316.00
Edward Valdez	2/13/2010	\$200.00
Michele Hernandez	2/13/2010	\$9.00
Arby's	2/26/2010	\$450.00
Brittany Collins	2/26/2010	\$650.00
April Jacque	2/26/2010	\$200.00
Ashlee Davis-Thomas (Daugherty)	2/26/2010	\$200.00
Kailib Lavongsar	2/26/2010	\$460.00
Arjenis Carcamo	2/26/2010	\$627.00
Joseph Rodriguez	2/26/2010	\$401.00
Katie Thompson	2/26/2010	\$700.00

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Ryan Truesdill	2/26/2010	\$30.00
Georgina Misner	2/26/2010	\$30.00
Pizza Patron	2/26/2010	\$1,300.00
Elio Ramirez	2/26/2010	\$60.00
Miguel Rodriguez	2/26/2010	\$606.00
GNC	2/27/2010	\$434.00
Adrian Cerenio	2/27/2010	\$40.00
Luis Hernandez	2/27/2010	\$200.00
Game Stop	2/27/2010	\$4,574.30
Christian Alvarez-Escobar	2/27/2010	\$100.00
Subway	3/13/2010	\$2,200.00
Gladiola Juarez	3/13/2010	\$15.00
Irma Fernandez	3/13/2010	\$50.00
Wienerschnitzel	3/24/2010	\$1,000.00
Dragon Buffet	4/1/2010	\$300.00
Ricky Santos	4/1/2010	\$300.00
Subway	4/15/2010	\$300.00
Joseph Adams	4/15/2010	\$22.00
Quiznos	4/20/2010	\$415.00
Thai Room	4/23/2010	\$1,203.64
Papa John's Pizza	4/23/2010	\$200.00
Nika Lowry-Hawkins	4/23/2010	\$200.00
Game Stop	4/27/2010	\$4,052.86
Subway	5/15/2010	\$40.00
<b>Total Restitution</b>		<b>\$48,018.12</b>